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ABSTRACT

Title IX of the Education Amendments of 1972 prohibits sex discrimination in all educational programs that receive federal money. This publication discusses Title IX and carefully examines the regulations developed by the Department of Health, Education, and Welfare to govern the administration and enforcement of Title IX. Substantive provisions of the HEW regulations are discussed as they apply to five subject areas, including coverage of the regulations, admission of students, treatment of students, employment, and enforcement procedures. Within each subject area, any special requirements or exemptions from the regulations are noted, and examples are given of how the law applies in a number of particular situations. An additional explanatory section, entitled "Title IX Questions and Answers," is also included. (JG)

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HEW FACT SHEET

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

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June 1975

TITLE IX - CIVIL RIGHTS

In June 1972, the Congress passed Title IX of the Education Amendments, a law which affects virtually every educational institution in the country. The law prohibits discrimination by sex in educational programs that receive Federal money.

The spirit of the law is reflected in this opening statement: Under Title IX, "No person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . ."

The law was originally introduced in 1971 as an amendment to the Civil Rights Act of 1964. Following Congressional debate and changes, the law, signed on June 23, 1972, emerged as Title IX of the Education Amendments of 1972, a broad-scale bill covering a range of Federal assistance programs.

During the deliberations on the new law, individuals and organizations testified to existing conditions which they believed made the passage of such a law essential.

Examples:

--Testimony indicated that girls were frequently denied the opportunity to enroll in traditionally male courses such as industrial arts and boys the opportunity to enroll in courses such as home economics because of overtly discriminatory secondary school policies. Even if such course enrollment restrictions were not present and a student interest existed, boys and girls would be counseled to enroll in traditionally male and female career development courses.

--Evidence concerning physical education activities indicated that women and girls were shortchanged. A school in a Midwestern district, for example, operated a program for girls that was substantially inferior to that operated for boys. In another case, rules in one State forced a high school to deny its best tennis player both coaching and a chance to compete on the school's tennis team because that athlete was female.

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--A national survey conducted in 1970-71 by the National Education Association showed that while women constituted 67 percent of all public school teachers, they accounted for only 15 percent of the principals and 0.6 percent of the superintendents. Most of the women holding administrative positions were confined to the elementary school level. Specifically, women represented 19 percent of the nation's elementary school principals; but, only 3.5 percent of the junior high principals and three percent at the senior high level.

--A study by the National Center for Educational Statistics revealed that as of 1973, women college faculty members received average salaries almost $2,500 less than those of their male counterparts. The study also showed that 9.7 percent of female faculty members had achieved the rank of professor, contrasted with 25.5 percent of males.

DEVELOPMENT OF REGULATIONS

This was the setting under which DHEW's Office for Civil Rights drew up the proposed regulation to carry out the nondiscrimination principles of Title IX. It applied, with a few specific exceptions, to all aspects of education programs or activities carried on by Federally assisted school districts, institutions of higher learning, or others receiving Federal financial aid. Generally, it covered admissions, treatment of students and employment.

On June 20, 1974, a proposed regulation was published in the Federal Register and public comment was invited. To assist the public in understanding the proposed regulations, representatives from the Office for Civil Rights conducted extensive briefings in 12 major cities throughout the country.

From the publication of the proposed regulations in June to the close of the comment period in October, HEW received nearly 10,000 public comments. The heaviest volume of comment came in six areas on the following issues:

--sex discrimination in sports and athletic programs,

--coeducational physical education classes,

--sex stereotyping in textbooks,

--the possible impact of the law on fraternities and sororities,

--scholarships, and

--employment issues.

Drafted on the basis of the proposed regulation issued in June of 1974 and reflecting a number of changes suggested by concerned

citizens, organizations and institutions, the final regulation has been signed by the President as required by the statute. Effective July 21, 1975, the final regulation prohibits, with certain exceptions, sex discrimination in education programs or activities which receive Federal financial assistance.

The regulation will be administered by the Office for Civil Rights of the U.S. Department of Health, Education and Welfare.

45 C.F.R. PART 86:

SUBSTANTIVE PROVISIONS

The final regulation covers the following areas with respect to recipients of Federal financial assistance for educational programs or activities:

Coverage;

Admission of students;

Treatment of students;

Employment; and

Procedures.

COVERAGE

Except for the specific limited exemptions set forth below, the final regulation applies to all aspects of all education programs or activities of a school district, institution of higher education, or other entity which receives Federal funds for any of those programs.

With respect to admissions to educational institutions, the final regulation applies only to: vocational, professional and graduate schools and to institutions of public undergraduate education (except those few public undergraduate schools which have been traditionally and continually single sex).

The final regulation does not cover admission to: recipient pre-schools, elementary, and secondary schools (except to vocational schools), private undergraduate institutions and, as noted above, to those few public undergraduate educational institutions that have been traditionally and continually single sex.

Even institutions whose admissions are exempt from coverage must treat all students nondiscriminatorily once they have admitted members of both sexes.

Military institutions at both the secondary and higher education level are entirely exempt from coverage under Title IX. Practices in schools run by religious organizations also are exempt to the extent compliance would be inconsistent with religious tenets. Thus, for example, if a religious tenet relates only to employment, the institution would still be prohibited from discrimination against students.

ADMISSIONS

The final regulation covers recruitment as well as all admissions policies and practices of those recipients not exempt as to admissions. It includes specific prohibitions of sex discrimination through separate ranking of applicants, application of sex-based quotas, administration of sex-biased tests or selection criteria, and granting of preference to applicants based on their attendance at particular institutions if the preference results in sex discrimination. The final regulation also forbids application in a discriminatory manner of rules concerning marital or parental status, and prohibits discrimination on the basis of pregnancy and related conditions, providing that recipients shall treat pregnancy and disabilities related to pregnancy in the same way as any other temporary disability or physical condition.

Generally, comparable efforts must be made by recipients to recruit members of each sex. Where discrimination previously existed, additional recruitment efforts directed primarily toward members of one sex must be undertaken to remedy the effects of the past discrimination.

EXAMPLES -- ADMISSIONS

--An institution whose admissions are covered by the regulation may not set quotas on the number of men or women who will be admitted. Thus, a medical school may not set such quotas, although a private undergraduate school may do so.

--An institution whose admissions are covered may not set different standards of admission for one sex than for the other. Thus, a graduate school may not require a lower grade point average for men than for women, although a private undergraduate school may do so.

--An institution of graduate, professional or vocational education which prior to enactment of Title IX had limited its admissions primarily to members of one sex must undertake special efforts to notify and recruit members of the sex previously barred or restricted in order to overcome the effects of past discrimination. Thus, a professional

school which previously purposely limited the proportion of females in each entering class to approximately 15% would be required to initiate special recruitment efforts to attract qualified female students. A similar institution whose admissions had not been subject to such a quota arrangement, but had admitted students without discrimination on the basis of sex, would be required only to make comparable efforts to attract members of each sex.

* * * * *

TREATMENT

As stated before, although some schools are exempt from Title IX with regard to admissions, all schools must treat their admitted students without discrimination on the basis of sex. With regard to treatment of students, therefore, the final regulation applies to recipient pre-schools, elementary and secondary schools, vocational schools, colleges, and universities at the undergraduate, graduate and professional levels, as well as to other agencies, organizations and persons which receive Federal funds for educational programs and activities.

Specifically, the treatment sections of the regulation cover the following areas:

(1) Access to and participation in course offerings and extracurricular activities, including campus organizations and competitive athletics;

(2) Eligibility for and receipt or enjoyment of benefits, services, and financial aid;

(3) Use of facilities, and comparability of, availability of, and rules concerning housing (except that single-sex housing is permissible).

The final regulation incorporates a Congressional exemption enacted into law in 1974, for the membership practices of social fraternities and sororities at the postsecondary level, the Boy Scouts, Girl Scouts, Campfire Girls, Y.W.C.A., Y.M.C.A., and certain voluntary youth services organizations. Thus, a recipient educational institution may provide assistance to such specifically exempted single-sex organizations without violating the non-discrimination requirements of the statute.

Classes in health education, if offered, may not be conducted

separately on the basis of sex, but the final regulation allows separate sessions for boys and girls at the elementary and secondary school level during times when the materials and discussion deal exclusively with human sexuality. There is, of course, nothing in the law or the final regulation requiring schools to conduct sex education classes. This is a matter for local determination.

Physical Education

While generally prohibiting sex segregated physical education classes, the final regulations do allow separation by sex in physical education classes during competition in wrestling, boxing, basketball, football, and other sports involving bodily contact. Schools must comply fully with the regulation with respect to physical education as soon as possible. In the case of physical education classes elementary schools must be in full compliance no later than one year from the effective date of the regulation. In the case of physical education classes at the secondary and postsecondary level, schools must be in compliance no later than three years from the effective date of the regulation. During these periods, while making necessary adjustments, any physical education classes or activities which are separate, must be comparable for each sex.

Athletics

Where selection is based on competitive skill or the activity involved is a contact sport, athletics may be provided through separate teams for males and females or through a single team open to both sexes. If separate teams are offered, a recipient institution may not discriminate on the basis of sex in provision of necessary equipment or supplies, or in any other way, but equal aggregate expenditures are not required. The goal of the final regulation in the area of athletics is to secure equal opportunity for males and females while allowing schools and colleges flexibility in determining how best to provide such opportunity.

In determining whether equal opportunities are available, such factors as these will be considered:

--whether the sports selected reflect the interests and abilities of both sexes;

--provision of supplies and equipment;

--game and practice schedules;

--travel and per diem allowances;

--coaching and academic tutoring opportunities and the assignment and pay of the coaches and tutors;

--locker rooms, practice and competitive facilities;

--medical and training services;

--housing and dining facilities and services;

--publicity.

Where a team in a non-contact sport, the membership of which is based on skill, is offered for members of one sex and not for members of the other sex, and athletic opportunities for the sex for whom no team is available have previously been limited, individuals of that sex must be allowed to compete for the team offered. For example, if tennis is offered for men and not for women and a woman wishes to play on the tennis team, if women's sports have previously been limited at the institution in question, that woman may compete for a place on the men's team. However, this provision does not alter the responsibility which a recipient has with regard to the provision of equal opportunity. Recipients are requested to "select sports and levels of competition which effectively accommodate the interests and abilities of members of both sexes." Thus, an institution would be required to provide separate teams for men and women, in situations where the provision of only one team would not "accommodate the interests and abilities of members of both sexes." This provision applies whether sports are contact or noncontact.

In the case of athletics, like physical education, elementary schools will have up to a year from the effective date of the regulations to comply, and secondary and postsecondary schools will have up to three years.

Organizations

Generally, a recipient may not, in connection with its education program or activity, provide significant assistance to any organization, agency or person which discriminates on the basis of sex. Such forms of assistance to discriminatory groups as faculty sponsors, facilities, administrative staff, etc., may, on a case-by-case basis, be determined to be significant enough to render the organization subject to the non-discrimination requirements of the regulation. As noted, previously, the final regulation incorporates an exemption for the membership practices of social fraternities and sororities at the postsecondary level, the Boy Scouts, Girl Scouts, Campfire Girls, Y.W.C.A., Y.M.C.A., and certain voluntary youth service organizations. However, recipients continue to be prohibited from providing significant assistance to professional or honorary fraternal organizations.

Benefits, Services, and Financial Aid

Generally, a recipient subject to the regulation is prohibited

from discriminating in making available, in connection with its educational program or activity, any benefits, services, or financial aid although "pooling" of certain sex-restrictive scholarships is permitted. Benefits and services include medical and insurance policies and services for students, counseling, and assistance in obtaining employment. Financial aid includes scholarships, loans, grants-in-aid and work-study programs.

Facilities

Generally, all facilities must be available without discrimination on the basis of sex. As provided in the statute, however, the regulation permits separate housing based on sex as well as separate locker rooms, toilets and showers. A recipient may not make available to members of one sex locker rooms, toilets and showers which are not comparable to those provided to members of the other sex. With respect to housing, the regulation requires comparability as to the facilities themselves and nondiscrimination as to their availability and as to the rules under which they are operated, including fees, hours, and requirements for off-campus housing.

Curricular Materials

The final regulation includes a provision which states that "nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials." As noted in the Preamble to the final regulation, the Department recognizes that sex stereotyping in curricula is a serious matter, but notes that the imposition of restrictions in this area would inevitably limit communication and would thrust the Department into the role of Federal censor. The Department assumes that recipients will deal with this problem in the exercise of their general authority and control over curricula and course content. For its part, the Department will increase its efforts, through the Office of Education, to provide research, assistance, and guidance to local educational agencies in eliminating sex bias from curricula and educational material.

EXAMPLES--TREATMENT

--A recipient school district may not require boys to take shop and girls to take home economics, exclude girls from shop and boys from home economics, or operate separate home economics or shop classes for boys and girls.

--A recipient vocational or other educational institution may not state in its catalog or elsewhere that a course is solely or primarily for persons of one sex.

--Male and female students shall not be discriminated against on the basis of sex in counseling. Generally, a counselor may not use different materials in testing or guidance based on the student's sex unless this is essential in eliminating bias and then, provided the materials cover the same occupations and interest areas. Also, if a school finds that a class contains a disproportionate number of students of one sex, it must be sure that this disproportion is not the result of sex-biased counseling or materials.

--A recipient school district may not require segregation of boys into one health, physical education, or other class, and segregation of girls into another such class.

--Where men are afforded opportunities for athletic scholarships, the final regulation requires that women also be afforded these opportunities.

Specifically, the regulation provides: "To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics."

--Locker rooms, showers, and other facilities provided for women must be comparable to those provided for men.

--A recipient educational institution would be prohibited from providing financial support for an all-female hiking club, an all-male language club, or a single-sex honorary society. However, a non-exempt organization whose membership was restricted to members of one sex could adhere to its restrictive policies, and operate on the campus of a recipient university, if it received no assistance from the university.

--Male and female students must be eligible for benefits, services and financial aid without discrimination on the basis of sex. Where colleges administer scholarships designated exclusively for one sex or the other, the scholarship recipients should initially be chosen without regard to sex. Then when the time comes to award the money, sex may be taken into consideration in matching available monies to the students chosen. No person may be denied financial aid merely because no aid for his or her sex is available. Prizes, awards and scholarships not established under a will or trust must be administered without regard to sex.

--An institution which has one swimming pool must provide for use by members of both sexes on a non-discriminatory basis.

--An institution which lists off-campus housing for its students must ensure that, in the aggregate, comparable off-campus housing is available in equal proportion to those members of each sex expressing an interest in it.

--Administration by a recipient institution of different rules based on sex regarding eligibility for living off-campus, curfews, availability of cleaning and janitorial assistance, etc. would violate the regulation.

EMPLOYMENT

All employees in all institutions are covered, both full- and part-time, except those in military schools, and in religious schools, to the extent compliance would be inconsistent with the controlling religious tenets. Employment coverage under the proposed regulation generally follows the policies of the Equal Employment Opportunity Commission and the Department of Labor's Office of Federal Contract Compliance. Specifically, the proposal covers:

(a) employment criteria

(b) recruitment

(c) compensation

(d) job classification and structure

(e) fringe benefits

(f) marital or parental status

(g) effect of state or local law or other requirements

(h) advertising

(i) pre-employment inquiries

(j) sex as a bona fide occupational qualification.

As to fringe benefits, employers must provide either equal contributions to or equal benefits under pension plans for male and female employees; as to pregnancy, leave and fringe benefits to pregnant employees must be offered in the same manner as are leave and benefits to temporarily disabled employees.

EXAMPLES--EMPLOYMENT

--A recipient employer may not recruit and hire employees solely from discriminatory sources in connection with its educational program or activity.

--A recipient employer must provide equal pay to male

and female employees performing the same work in connection with its educational program or activity.

--A recipient employer may not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy or related conditions.

ENFORCEMENT PROCEDURE

The final regulation incorporates by reference a procedural section which includes among other things, compliance reviews, access to information, administrative termination procedures (hearings), decision, administrative and judicial review and post-termination proceedings.

Should a violation of the statute occur, the Department is obligated to seek voluntary compliance. If attempts to secure voluntary compliance fail, enforcement action may be taken:

(1) by administrative proceedings to terminate Federal financial assistance until the institution ceases its discriminatory conduct; or

(2) by other means authorized by law, including referral of the matter to the Department of Justice with a recommendation for initiation of court proceedings. Under the latter mode of enforcement, the recipient's Federal funds are not jeopardized.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office for Civil Rights
Washington, D.C. 20201

JUNE 1975

TITLE IX QUESTIONS AND ANSWERS

QUESTION:
What is Title IX?

ANSWER:
Title IX is that portion of the Education Amendments of 1972 which forbids discrimination on the basis of sex in educational programs or activities which receive Federal funds.

QUESTION:
Who is covered by Title IX?

ANSWER:
Virtually every college, university, elementary and secondary school and preschool is covered by some portion of the law. Many clubs and other organizations receive Federal funds for educational programs and activities and likewise are covered by Title IX in some manner.

QUESTION:
Who is exempt from Title IX's provisions?

ANSWER:
Congress has specifically exempted all military schools and has exempted religious schools to the extent that the provisions of Title IX would be inconsistent with the basic religious tenets of the school.

Not included with regard to admission requirements ONLY are private undergraduate colleges, nonvocational elementary and secondary schools and those public undergraduate schools which have been traditionally and continuously single-sex since their establishment.

However, even institutions whose admissions are exempt from coverage must treat all students without discrimination once they have admitted members of both sexes.

QUESTION:
Does the law cover social sororities and fraternities?

ANSWER:
Congress has exempted the membership practices of social fraternities and sororities at the postsecondary level, the Boy Scouts, Girl Scouts, Camp Fire Girls, Y.W.C.A., Y.M.C.A., and certain voluntary youth services organizations. However,

if any of these organizations conduct educational programs which receive Federal funds open to nonmembers, those programs must be operated in a nondiscriminatory manner.

QUESTION:
May a vocational school limit enrollment of members of one sex because of limited availability of job opportunities for members of that sex?

ANSWER:
No. Further, a school may not assist a discriminatory employer by referral of students or any other manner.

QUESTION:
In athletics, what is equal opportunity?

ANSWER:
In determining whether equal opportunities are available, such factors as these will be considered:

-whether the sports selected reflect the interests and abilities of both sexes;

-provision of supplies and equipment;

-game and practice schedules;

-travel and per diem allowances;

-coaching and academic tutoring opportunities and the assignment and pay of the coaches and tutors;

-locker rooms, practice and competitive facilities;

-medical and training services;

-housing and dining facilities and services;

-publicity.

QUESTION:
Must an institution provide equal opportunities in each of these categories?

ANSWER:
Yes. However, equal expenditures in each category are not required.

QUESTION:
What sports does the term "athletics" encompass?

ANSWER:
The term "athletics" encompasses sports which are a part of interscholastic, intercollegiate, club or intramural programs.

QUESTION:
When are separate teams for men and women allowed?

ANSWER:
When selection is based on competitive skill or the activity involved is a contact sport, separate teams may be provided for males and females, or a single team may be provided which is open to both sexes. If separate teams are offered, a recipient institution may not discriminate on the basis of sex in providing equipment or supplies or in any other manner.

Moreover, the institution must assure that the sports offered effectively accommodate the interest and abilities of members of both sexes.

QUESTION:
If there are sufficient numbers of women interested in basketball to form a viable women's basketball team, is an institution which fields a men's basketball team required to provide such a team for women?

ANSWER:

One of the factors to be considered by the Director in determining whether equal opportunities are provided is whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes. Therefore, if a school offers basketball for men and the only way in which the institution can accommodate the interests and abilities of women is by offering a separate basketball team for women, such a team must be provided.

QUESTION:
If there are insufficient women interested in participating on a women's track team, must the institution allow an interested woman to compete for a slot on the men's track team?

ANSWER:
If athletic opportunities have previously been limited for women at that school, it must allow women to compete for the men's team if the sport is a noncontact sport such as track. The school may preclude women from participating on a men's team in a contact sport. A school may preclude men or women from participating on teams for the other sex if athletic opportunities have not been limited in the past for them, regardless of whether the sport is contact or noncontact.

QUESTION:
Can a school be exempt from Title IX if its athletic conference forbids men and women on the same noncontact team?

ANSWER
No. Title IX preempts all state or local laws or other requirements which conflict with Title IX.

QUESTION:
How can a school athletics department be covered by Title IX if the department itself receives no direct Federal aid?

ANSWER:
Section 844 of the Education Amendments of 1974 specifically states that: "The Secretary shall prepare and publish...proposed regulations implementing the provisions of Title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in Federally-assisted education programs which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports."

In addition, athletics constitutes an integral part of the educational processes of schools and colleges and, thus, are fully subject to the requirements of Title IX, even in absence of Federal funds going directly to the athletic programs.

The courts have consistently considered athletics sponsored by an educational institution to be an integral part of the institution's education program and, therefore, have required institutions to provide equal opportunity.

QUESTION:
Does a school have to provide athletic scholarships for women?

ANSWER:
Specifically, the regulation provides: "To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics."

QUESTION:
How can schools and colleges interested in a positive approach to Title IX deal with its provisions?

ANSWER:
To encourage each school and college to look at its policies in light of the law, the final regulation now includes a self-evaluation provision. This requires that during the next year the educational institution look at its policies and modify them to comply with the law as expressed by the regulation. This includes remedying the effects of any past discrimination.

QUESTION:
Does Title IX cover textbooks?

ANSWER:
No. While the Department recognizes that sex stereotyping in curricula and educational material is a serious matter, it is of the view that any specific regulatory requirement in this area raises constitutional questions under the First Amendment. The Department believes that local education agencies must deal with this problem in the exercise of their traditional authority and control over curriculum and course content.

QUESTION:
Many universities administer substantial sums of scholarship money created by wills and trusts which are restricted to one sex. If the will or trust cannot be changed to remove the restriction, must the universities cease administration of the scholarship?

ANSWER:
Where colleges administer domestic or foreign scholarships designated by a will, trust or similar legal instrument, exclusively for one sex or the other, the scholarship recipients should initially be chosen without regard to sex. Then, when the time comes to award the money, sex may be taken into consideration in matching available money with students to be awarded the money. Scholarships, awards or prizes which are not created by a will, trust, or similar legal instrument, may not be sex-restricted.

QUESTION:
What are the Title IX requirements for counseling in schools and colleges?

ANSWER:
An institution using testing or other materials for counseling may not use different materials for males and females, nor may it use materials which lead to different treatment of students on the basis of sex.

If there is a class or course of study which has a disproportionate number of members of one sex, the school is required to assure that the disproportion does not stem from discrimination by counselors or materials.

QUESTION:
May a college administer or assist in the administration of sex-restrictive scholarships, such as the Rhodes, which provide opportunities for students to study abroad?

ANSWER:
Yes, if (1) The scholarship was created by a will, trust, or similar legal instrument, or by an act of foreign government, and (2) The institution otherwise makes available reasonable opportunities for similar studies abroad by members of the other sex. Such opportunities may be derived from either domestic or foreign sources.